

PLEASE RETURN TO LEGAL

COOK INDUSTRIES, INC. PROJECT
SUB-LEASE TRANSACTION TO
MARUBENI-AMERICA CORPORATION

DATED JUNE 19, 1978

PLEASE RETURN TO LEGAL
CARRIED

USEPA SF



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October 29, 1980

PLEASE RETURN TO LEGAL

Mr. Marion F. Siedow
Port of Portland
P.O. Box 3529
Portland, Oregon 97208

Re: Cook Industries, Inc. Project
Sub-Lease Transaction to
Marubeni-America Corporation

Dear Marion:

Enclosed please find an executed transcript
for the above transaction.

With kindest personal regards, I am

Very truly yours,

Martin

Martin J. Dockery

MJD/db
Enclosure

PLEASE RETURN TO LEGAL

POPGPA00017704

THE PORT OF PORTLAND

Cook Industries, Inc. Project Sub-Lease Transaction to Marubeni-America Corporation Dated June 19, 1978

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Sublease and Asset Purchase Agreement

among

Cook Industries, Inc.

Columbia River Terminal Company

and

Marubeni America Corporation

dated

June 19, 1978

Sublease and Asset Purchase Agreement

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Sublease and Asset Purchase Agreement

Agreement, dated, June 19, 1978, among Cook Industries, Inc. ("Cook"), a Delaware corporation, Columbia River Terminal Company ("CRT"), a Delaware corporation and a wholly-owned subsidiary of Cook (Cook and CRT being collectively referred to as "Sellers") and Marubeni America Corporation ("Marubeni"), a New York corporation which is a wholly-owned subsidiary of Marubeni Corporation ("Marubeni-Japan"), a Japanese corporation.

Recitals

1. The Port of Portland as lessor (the "Port") and Cook as lessee entered into a Lease and Agreement dated July 20, 1973 (the "Lease and Agreement") whereby the Port leased to Cook certain land, facility and equipment to be used as a grain elevator as more fully set forth in the Lease and Agreement. Pursuant to an Agreement for Assignment of Lease (the "Agreement for Assignment of Lease") dated December 10, 1975 between Cook and CRT (and consented to by the Port and the United States National Bank of Oregon (the "Trustee")) Cook assigned all of its right, title and interest in, to and under the Lease and Agreement to CRT and CRT assumed all of Cook's rights, duties and liabilities thereunder. The Port and CRT entered into a Lease dated July 13, 1977 (the "Parking Lot Lease") covering certain premises to be used as a parking lot, as more fully set forth in the Parking Lot Lease (the "Parking Lot"; the Lease and Agreement and the Parking Lot

Lease are hereinafter collectively called the "Elevator Leases").

2. The facility and equipment subject to the Lease and Agreement were financed by Public Grain Elevator Revenue Bonds, 1973 Series, Cook Industries, Inc. Project (the "1973 Series Bonds") issued by the Port pursuant to Bond Ordinance No. 176, dated April 17, 1975 (the "Bond Ordinance"). Cook has guaranteed to the Trustee, for the benefit of any holder of the 1973 Series Bonds, the payment of principal, premium (if any) and interest on each Bond when due, pursuant to the guarantee agreement between Cook and the Trustee dated as of April 1, 1975 (the "Bond Guarantee"; the Lease and Agreement, the Agreement for Assignment of Lease, the Bond Ordinance and the Bond Guarantee are hereinafter collectively called the "Elevator Agreements").

3. On the terms and subject to the conditions of this Agreement:

(a) CRT wishes to sublease to a corporation ("Buyer") to be organized under the laws of one of the United States which will be wholly-owned, directly or indirectly by Marubeni and/or Marubeni-Japan and Marubeni wishes to cause Buyer to sublease from CRT, the property leased by it under the Elevator Leases, as well as certain additional equipment owned by CRT, as more fully set forth in the Sublease and Agreement annexed

hereto as Part 1 of Exhibit A (all of the real and personal property described in the proposed subleases as set forth in Exhibit A hereto is hereinafter collectively called the "Elevator Properties");

(b) Sellers wish to grant to Buyer and Marubeni and Marubeni wishes to cause Buyer and Marubeni to obtain from Sellers, an option to purchase all of Sellers' right, title and interest in, to and under the Elevator Leases and such additional equipment; and

(c) Sellers wish to sell, and Marubeni wishes to cause Buyer to buy, Sellers' right, title and interest in and to certain spare parts and supplies located in or at the Elevator Properties.

4. CRT is unwilling (and Cook is unwilling to permit CRT) so to sublease to Buyer or so to grant an option to Buyer and Marubeni unless all of the obligations of Buyer and Marubeni in respect of such subleases and option agreement are guaranteed by Marubeni-Japan; and Marubeni is willing to obtain such guarantee..

5. Marubeni is unwilling for Buyer so to sublease from CRT unless all of the obligations of CRT in respect of the subleases are guaranteed by Cook, and Cook is willing to make such guarantee.

NOW, THEREFORE, the parties hereby agree as

follows:

1. Sublease and Option; Purchase of Assets

On the terms and subject to the conditions set forth in this Agreement, at the Closing (as hereinafter defined):

1.1. Sublease. Buyer and CRT will enter into a sublease substantially in the form set forth in Part 1 of Exhibit A relating to the Project (as defined therein, hereinafter, the "Project"), and a sublease substantially in the form set forth in Part 2 of Exhibit A (the "Parking Lot Sublease") relating to the Parking Lot, each of which will be dated the Closing Date, pursuant to which CRT shall sublease to Buyer the Project and the Parking Lot on the terms and conditions set forth therein. (The Sublease and Agreement and the Parking Lot Sublease are collectively called the "Subleases".)

1.2. Option Agreement. Cook, CRT, Marubeni and Buyer will enter into an option agreement substantially in the form set forth in Exhibit B (the "Option Agreement"), granting Buyer and/or Marubeni an option to purchase all the lessee's right, title and interest in, to and under the Elevator Leases and any Leased Equipment (as defined in the Sublease and Agreement) which is not subject to the Lease and Agreement on the terms and conditions set forth in the Option Agreement.

1.3. Marubeni-Japan Guarantee. Marubeni-Japan will enter into the guarantee substantially in the form set

forth in Exhibit C (the "Marubeni-Japan Guarantee"), unconditionally guaranteeing to Sellers and their successors and assigns Buyer's performance under the Subleases and Buyer's and Marubeni's performance under the Option Agreement.

1.4. Cook Guarantee. Cook will enter into the guarantee substantially in the form set forth in Exhibit D (the "Cook Guarantee"), unconditionally guaranteeing to Buyer and its permitted successors and assigns, the performance of the sublessor under the Subleases.

1.5. Sale and Purchase of Assets. Sellers will sell and assign to Buyer and Buyer will purchase and take from Sellers, the following properties (collectively the "Sold Assets"):

(a) all of Sellers' spare parts and supplies intended to be used for replacement or consumption in connection with the operation of the Project or the Parking Lot, which are, on the Closing Date, located in or at the Elevator Properties (the "Spare Parts and Supplies"); (a list of spare parts and supplies located in or at the Elevator Properties on May 5, 1978 is attached hereto as Exhibit E);

(b) all of Sellers' title to, interest in and rights under the leases described in Exhibit F, relating to personal property located in or at the Elevator Properties (the "Equipment Leases");

(c) all of Sellers' transferable rights under the agreements described in Exhibit G for the supply of fuel, water, electricity or other goods or services for the maintenance, servicing or physical operation of the Elevator Properties (the "Operating Contracts");

(d) all of Sellers' title to, interest in and rights under the insurance policies described in Exhibit H (the "Insurance Policies").

The documents to be executed at the Closing shall contain such changes as the Port or the Trustee may reasonably request provided that such changes do not materially change the rights or obligations of the parties as contemplated herein and in the Exhibits to this Agreement. Attached as Exhibit I is a form of Amendatory Lease (the "Amendatory Lease") to be submitted by the parties to the Lessor and the Trustee. Subject to Section 6.2(j), if the Port or the Trustee shall decline to execute the Amendatory Lease (or shall require the elimination of any sections thereof), all references to the Amendatory Lease (or any sections so eliminated) shall be eliminated from the documents to be executed at the Closing. Sellers are not selling and Buyer is not buying pursuant to this Agreement, any tangible or intangible rights or properties of Sellers not included in the Sold Assets (including, without limitation any accounts receivable, computer programs, grain or grain contracts or good will), whether or not such properties

pertain to the Elevator Properties or the business conducted by Sellers thereat.

2. Purchase Price

2.1. Cash Purchase Price. Buyer or Marubeni on behalf of Buyer will pay to Sellers an amount equal to the aggregate cost to Sellers of the Spare Parts and Supplies. Such cost will be estimated in good faith at the Closing by Cook's Chief Financial Officer and the amount payable under this Section 2.1 at the Closing shall be equal to such estimate; provided, however, that, if, at the Closing, Buyer or Marubeni shall disagree with such estimate, it may furnish its own estimate of such cost, which shall be made in good faith by, and signed by, a duly authorized officer of Buyer or Marubeni, and the amount payable under this Section 2.1 at the Closing shall be the average of such estimates. As soon as practicable after the Closing, the parties shall cause Price, Waterhouse & Co. to deliver to each of them a certificate setting forth such cost and the quantity of the Spare Parts and Supplies, as determined by a physical inventory as of the Closing Date.

2.2. Assumption of Obligations. At the Closing, Buyer will assume all obligations of Sellers under the Equipment Leases, the Operating Contracts and the Insurance Policies (the "Assumed Obligations"), excluding, however, any obligations of Sellers for the payment of money which was due and payable prior to the Closing Date (other than

any such obligation which was taken into account in the adjustment pursuant to Section 10) and excluding any other obligations or liabilities of Sellers due or required to be performed thereunder prior to the Closing Date.

2.3. Adjustment at Closing. The purchase price for the Sold Assets will be adjusted as follows:

(a) The purchase price shall be reduced to reflect the withdrawal from the sale to Buyer of any of the Sold Assets pursuant to the provisions of Section 7.

(b) The purchase price shall be adjusted to reflect the apportionment of certain items referred to in Section 10.

2.4. Payment. On the Closing Date, Buyer or Marubeni on behalf of Buyer will transfer to the account of Sellers at The Chase Manhattan Bank, N.A., One Chase Manhattan Plaza, New York, New York, or at such other bank or banks located in the United States as Sellers shall designate by notice to Buyer at least five days prior to the Closing Date, immediately available funds equal to the net cash portion of the purchase price, estimated and adjusted as provided herein.

2.5. Post-Closing Adjustments. If any estimate or provisional determination provided for in this Agreement which affects the amount of any payment to be made at the Closing shall prove upon final determination to have been inaccurate, then, promptly after such final determination, Sellers will

pay to Buyer, or Buyer (or Marubeni on behalf of Buyer) will pay to Sellers, as the case may be, any amount which may be necessary to adjust for the difference between such estimate or provisional determination, and such final determination, together with interest thereon from the Closing Date to the date of such payment at a rate equal to 1% above the prime rate of The Chase Manhattan Bank, N.A., New York, New York during such period.

3. Closing and Related Transactions.

3.1. Closing Time and Place. The Closing hereunder (the "Closing") will take place at the offices of Fried, Frank, Harris, Shriver & Jacobson, 120 Broadway, New York, New York, at 11 A.M. New York Time on July 19, 1978, or on such other date as provided in Section 3.2 or as may be agreed upon by Cook and Marubeni (the "Closing Date").

3.2. Postponement of Closing.

(a) In the event that it shall appear that a condition to the Closing set forth in Section 6.1(e) or Section 6.2 cannot be fulfilled prior to the scheduled Closing Date (other than a condition with respect to any of the Sold Assets which have been withdrawn pursuant to Section 7), Sellers or Marubeni will give notice to the other describing the circumstances and the action taken or to be taken with respect thereto, whereupon Sellers or Marubeni may, by notice, postpone or repostpone the

Closing, for such reasonable period of time as will permit such condition to be fulfilled in the reasonable judgment of the party giving the notice; provided that:

(i) the Closing may not be postponed or repostponed pursuant to this paragraph (a) beyond August 31, 1978, unless otherwise agreed;

(ii) none of the parties may postpone the Closing for failure to fulfill the conditions set forth in Section 6.1(f) or Section 6.2 (g) without the consent of the other parties hereto; if this Agreement is terminated because of the failure to fulfill the conditions specified in Section 6.1(f) or 6.2(g), none of the parties shall have liability to the others by reason thereof;

(b) In the event that at the scheduled Closing Date, any party to this Agreement shall be subject to an injunction issued by a court of competent jurisdiction in the United States preventing such party from doing anything necessary for the Closing to take place, (i) each party will use its best efforts to cause such injunction to be stayed, dissolved or discontinued and (ii) the Closing shall be postponed automatically until the second Monday following the day on which such stay, disso-

lution or discontinuance is obtained; provided, that if such injunction shall be in effect on August 31, 1978, then, so long as such injunction remains in effect, any party may terminate this Agreement without liability by notice to the others.

3.3. Delivery of Instruments. At the Closing:

(a) Instruments of Transfer. Sellers will execute and deliver to Buyer such bills of sale, assignments and other instruments and documents without warranty (but not in derogation of the warranties contained in this Agreement) as shall be effective to vest in Buyer at the Closing all of Sellers right, title and interest in and to the Sold Assets.

(b) Agreements. Sellers will deliver to Buyer all executed originals in their possession of the Equipment Leases and the Operating Contracts.

(c) Leased Equipment List. Sellers will deliver to Buyer a list of the Leased Equipment (as defined in the Sublease and Agreement) as the same exists on the Closing Date. (Attached as Exhibit J is a list of the Leased Equipment as the same existed on May 5, 1978.)

(d) Assignment and Assumption of Assumed Obligations. Sellers and Buyer will execute and deliver

to each other an instrument or instruments in substantially the form attached hereto as Exhibit K evidencing Sellers' assignment and Buyer's assumption of the Assumed Obligations.

3.4. Payment of Taxes. Sellers will pay all transfer taxes, sales taxes and other taxes in respect of the transfers contemplated hereby to occur on the Closing and will prepare and file any returns and other filings relating to any of such taxes. Buyer or Marubeni, on behalf of Buyer, will pay all costs of recordation of the Subleases, the Option Agreement and the instruments of transfer referred to in paragraph (a) of Section 3.3.

3.5. Payment of Amounts Under Subleases. On the Closing Date Buyer or Marubeni, on behalf of Buyer, will pay to CRT all amounts due under the Subleases upon the Commencement Date (in the case of, and as defined in, the Sublease and Agreement) or the execution thereof (in the case of the Parking Lot Sublease). Such amounts (and the calculation thereof) will be set forth in a certificate of the Chief Financial Officer of Cook delivered to Buyer on the Closing Date.

4. Representations and Warranties

4.1. Representations and Warranties of Sellers. Sellers jointly and severally hereby represent and warrant to Buyer and Marubeni as follows:

(a) Organization and Standing, etc. Each of Sellers is a corporation organized, validly existing and in good standing under the laws of its jurisdiction of incorporation.

(b) Title to the Sold Assets, etc. On the Closing Date, Sellers will transfer title to the Sold Assets, tangible and intangible, free and clear of all liens, mortgages, security interests and other encumbrances, other than those to be expressly assumed by Buyer and except under any applicable Bulk Sales Law and except as set forth in Exhibit L. On the Closing Date, CRT's leasehold interest under the Sublease and Agreement will be free and clear of all liens, mortgages, security interests and other encumbrances, other than those set forth in Exhibit L.

(c) Status of Agreements. The copies of the Elevator Agreements, the Equipment Leases, the Operating Contracts and the Insurance Policies heretofore exhibited by Sellers to Marubeni's representatives are true and complete copies thereof, and none of the same has been amended or supplemented, except as evidenced by amendments or supplements similarly exhibited. Each such agreement is in full force and effect. To the actual knowledge of the Chairman of the Board,

the President and both of the Executive Vice Presidents of Cook, there are no defaults by Sellers under any of such agreements. Sellers will pay all amounts required to be paid on or before the Closing Date under such agreements.

(d) Corporate Power and Authority. This Agreement and each of the documents to be executed and delivered by Sellers to Buyer and Marubeni pursuant to this Agreement is within Sellers' corporate power and authority. Subject to the approval of Sellers' Board of Directors as specified in Section 6.1(f), this Agreement has been, and each of the documents to be delivered by Sellers to Buyer and Marubeni pursuant to this Agreement will be, duly authorized, executed and delivered by Sellers and does and will constitute binding agreements of Sellers in accordance with their respective terms. Neither the execution nor the delivery of this Agreement and such documents or the consummation by Sellers of the transaction contemplated hereby will constitute a violation of, or give rise to a default under, any statute, rule or government regulation, or any judgment, decree or order applicable to Sellers or any of their properties or any mortgage, indenture, loan agreement or other document to which either of Sellers is a

party or by which either is bound. No shareholder or governmental authorization or approval (except as provided herein) is required for Sellers to enter into this Agreement and the agreements contemplated hereby or to perform their obligations hereunder.

(e) Labor Agreement and Benefit Plans. As of the date hereof, there is no pension plan, profit sharing plan, employee benefit plan, collective bargaining agreement or employment contract relating to any of the employees employed by Sellers at the Project, except as described in Exhibit M.

(f) Notices of Violation, etc. Except as set forth in Exhibit N, to the actual knowledge of the Chairman of the Board, the President, and each of the Executive Vice Presidents of Cook, as of the date of this Agreement, no written notice or communication from any court or governmental agency or instrumentality of any violation of any zoning ordinance, law, decree, order or governmental regulation (including those relating to environmental protection and occupational health and safety) applicable to the Project has been received by Sellers other than any which has been complied with in all material

respects. Except as set forth in Exhibit N, to the actual knowledge of the Chairman of the Board, the President, and each of the Executive Vice Presidents of Cook, as of the date of this Agreement Sellers have not received written notice of any outstanding governmental order, injunction or decree against Sellers applicable to the Project which would affect or be applicable to Buyer's operation of the Project. Sellers will deliver to Marubeni copies of all such notices or communications filed or communicated on or subsequent to the date hereof. At or prior to the Closing, Sellers will pay in full all penalties, fines, and other charges payable or accrued in respect of all notices or other communications of such violations communicated or filed on or subsequent to the date hereof and prior to the Closing Date except that any such penalty, fine or charge which (a) Sellers shall be contesting by appropriate legal or other proceedings conducted in good faith and with due diligence (Sellers having posted any security required by such proceedings), and (b) involves no imminent danger that any material part of the Elevator Properties will be sold, forfeited or lost or subjected to any material

lien or that Marubeni or Buyer will suffer any material civil liability or criminal liability for the failure to pay the same, may be paid by Sellers after the Closing.

(g) Pending Actions; Orders. As of the date of this Agreement, there is no legal action or governmental proceeding or investigation pending or, to Sellers' knowledge, overtly threatened which would prevent or materially and adversely affect performance by Sellers under this Agreement.

(h) Financial Statements. Cook has furnished Marubeni with a true, complete and correct copy of its Proxy Statement dated May 10, 1978 relating to the Annual Meeting of Stockholders of Cook held May 26, 1978 which contain Cook's audited consolidated financial statements dated May 31, 1977. Subject to the matters discussed in the second paragraph of the report of Price Waterhouse & Co. contained in such Proxy Statement, such financial statements fairly present the consolidated financial position of Cook and its consolidated subsidiaries at May 31, 1977 and the results of their operations and the changes in their financial position for the three years then ended, all in conformity with generally accepted accounting principles consistently applied. Since the date of such finan-

cial statements, except as set forth in such Proxy Statement, there has not been any material adverse change in Cook's financial condition, assets, liabilities, business or prospects.

(i) Permits. Exhibit O lists all federal, state and local permits, franchises, bonds, and licenses held by Sellers in connection with their ownership of the Sold Assets and operation of the Project and the Parking Lot.

4.2. Representations and Warranties of Marubeni.

Marubeni hereby represents to Sellers as follows:

(a) Organization and Standing. Each of Marubeni and Marubeni-Japan is, and on the Closing Date Buyer will be, a corporation organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.

(b) Corporate Power and Authority. This Agreement and each of the documents to be executed and delivered by Marubeni and Marubeni-Japan, respectively, to Sellers pursuant to this Agreement is within Marubeni's and Marubeni-Japan's respective corporate power and authority. Each of the documents to be executed and delivered by Buyer to Sellers pursuant to this Agreement will, when so delivered, be within Buyers' corporate power and authority. Subject to the approval of Marubeni's and

Marubeni-Japan's Board of Directors as specified in Section 6.2(g), this Agreement has been, and each of the documents to be delivered by Marubeni, Marubeni-Japan or Buyer, respectively, to Sellers pursuant to this Agreement will be, duly authorized, executed and delivered by Marubeni, Marubeni-Japan and Buyer and does and will constitute binding agreements of Marubeni, Marubeni-Japan and Buyer, as the case may be, in accordance with their respective terms. Neither the execution nor the delivery of this Agreement and such documents, the consummation by Buyer, Marubeni and Marubeni-Japan of the transactions contemplated hereby, or the operation by Buyer of the Project will constitute a violation, or give rise to a default, under any statute, rule or governmental regulation, or any judgment, decree or order applicable to Buyer, Marubeni or Marubeni-Japan or any of their properties or any mortgage, indenture, loan agreement or other document to which Buyer, Marubeni or Marubeni-Japan is a party or by which any of them is bound. No shareholder or governmental authorization or approval (except as provided herein) is required for Buyer, Marubeni or Marubeni-Japan to enter into this Agreement and the agreements contemplated hereby or to perform their obligations

hereunder.

(c) Japanese Government Approval. Except as set forth in Exhibit P, no consent, approval or authorization of, or registration, qualification, designation, declaration or filing with, any governmental authority in Japan is required in connection with the formation of Buyer or the execution and delivery of this Agreement, the Subleases, the Option Agreement or the Marubeni-Japan Guarantee or the consummation of the transactions contemplated hereby.

(d) Pending Actions; Orders. As of the date of this Agreement, there is no legal action or governmental proceeding or investigation pending or, to Marubeni's knowledge, overtly threatened which would prevent or materially and adversely affect performance by Buyer or Marubeni under this Agreement.

(e) Financial Statements. Marubeni has furnished Cook with true, complete and correct copies of its and Marubeni-Japan's audited consolidated financial statements dated March 31, 1977. Such financial statements fairly present the financial position of Marubeni and the consolidated financial position of Marubeni-Japan and its consolidated subsidiaries at March 31, 1977 and

their respective results of operations and changes in financial position for the year then ended, all in conformity with generally accepted accounting principles consistently applied. Since the date of such audited consolidated financial statements, there has not been any material adverse change in Marubeni's or Marubeni-Japan's financial condition, assets, liabilities, business or prospects, and there has been no diminution in Marubeni's stockholders' equity.

(f) Examination of Documents. Marubeni acknowledges that its representatives have examined copies of the Elevator Agreements, the Equipment Leases, and Operating Contracts. To the extent that there are any variations between any information set forth herein or in any schedule annexed hereto and the foregoing documents which have been examined, such documents shall control.

5. Covenants.

5.1. Covenants of Sellers. Sellers covenant and agree as follows:

(a) Access, etc. From the date hereof to and including the Closing Date, Sellers will give Buyer, Marubeni and their counsel, accountants and other representatives full and free access at all times during normal business hours to the Project,

the Sold Assets and properties relating thereto and to all of the books, contracts, commitments and records of Cook relating thereto (other than such documents relating to customer lists and pricing), and will furnish to Buyer and Marubeni or their representatives all such documents and information with respect to the Project, the Sold Assets and such properties as Buyer or Marubeni from time to time may reasonably request. Sellers will immediately disclose to Marubeni, in reasonable detail, the occurrence of any material damage to, or destruction of, or other adverse change in the physical condition, storage capacity, through-put capacity or operation of the Project, on or after the date hereof and until the Closing. Sellers will promptly disclose to Marubeni, in reasonable detail, any material change prior to the Closing in Exhibits E, F, G, H and J.

(b) Best Efforts, Amendatory Lease, etc. Sellers will use their best efforts to obtain from the parties other than Sellers to the Equipment Leases, the Operating Contracts and the Insurance Policies, consent to the assignment by Sellers to Buyer at the Closing of Seller's title to, interest in and rights under such contracts and leases, to the extent such consents are necessary. Sellers

will use their best efforts to keep the Insurance Policies in full force and effect through the Closing Date. Sellers will use their best efforts to fulfill all other conditions to be fulfilled by them under this Agreement and to carry out the transactions contemplated hereby and to obtain the approval of the Port and the Trustee to the Option Agreement attached as Exhibit B and an amendatory lease in substantially the form set forth in Exhibit I. If approved by the Port and the Trustee. Sellers will, at the Closing, enter into an amendatory lease containing any of the provisions set forth in Exhibit I. Sellers will cooperate with Buyer and Marubeni in obtaining all consents, approvals and permits required to be obtained by Buyer and Marubeni in connection with this Agreement.

(c) Purchases and Sales of Assets, etc. Sellers will not purchase or sell or otherwise dispose of any of the Sold Assets or any of the Leased Equipment (as defined in the Sublease and Agreement) other than in the ordinary course of the business of operating the Elevator Properties. Sellers will service and maintain and repair the Project and the Parking Lot in the ordinary course and in accordance with their past practice and will not commit or permit any waste at the Project.

(d) Confidentiality. Without the prior written consent of Marubeni, Sellers will not permit their officers, directors, employees or agents to disclose to any third party or use to the detriment of Sellers any information contained in the financial statements of Marubeni and Marubeni-Japan described in Section 4.2(e) which is not generally known to the public without breach of Sellers' obligations hereunder.

(e) Drawings and Studies. Upon execution of this Agreement, Sellers will make available to Marubeni originals of all architectural or engineering drawings and studies of the Elevator Properties, and all appraisals and reports concerning the condition thereof, to the extent that any of the same may be in Sellers' possession or control, and will give Marubeni or Buyer copies of any such documents as Marubeni or Buyer may reasonably request.

5.2. Covenants by Marubeni. Marubeni covenants and agrees as follows:

(a) Best Efforts, etc. Buyer, Marubeni and Marubeni-Japan will use their best efforts to obtain all required consents or approvals specified in Section 4.2(c), to fulfill all conditions to be fulfilled by any of them under this Agreement, and

to carry out the transactions contemplated hereby. Buyer, Marubeni and Marubeni-Japan will use their best efforts to obtain on or prior to the Closing Date all permits, franchises, bonds, licenses and consents necessary for Buyer to own the Sold Assets, to operate the Elevator Properties and for Buyer, Marubeni and Marubeni-Japan to consummate the transactions contemplated hereby. Buyer, Marubeni and Marubeni-Japan will cooperate with Sellers in obtaining all consents and approvals required or contemplated to be obtained by Sellers in connection with this Agreement.

(b) Confidentiality. Until the Closing Date, all information and data and all records, copies, extracts and other documents obtained from Sellers or as a result of any investigation or review of the Project or the Sold Assets shall be held in strict confidence by Buyer, Marubeni and Marubeni-Japan and their respective employees and agents. If for any reason the Closing does not occur, (i) Buyer, Marubeni and Marubeni-Japan will return to Seller all data, records, copies, extracts and other documents obtained from Sellers or as a result of such investigations or reviews and (ii) without the prior written consent of Sellers, Buyer, Marubeni and Marubeni-Japan will not permit

their respective officers, directors, employees or agents to disclose to any third party or use to the detriment of Sellers any of the information obtained from Sellers or as a result of such investigations or reviews which is not generally known to the public without breach of Buyer's, Marubeni's or Marubeni-Japan's obligations hereunder.

6. Conditions.

6.1. Conditions of Sellers' Obligations. Sellers' obligations to consummate the transactions contemplated hereby are subject to the fulfillment, to Sellers' reasonable satisfaction, prior to or at the Closing, of the following conditions:

(a) Representations and Warranties True at the Closing. The representations and warranties made by Marubeni in this Agreement or by Buyer, Marubeni or Marubeni-Japan in any document furnished to Sellers pursuant hereto or in connection with the transactions contemplated hereby shall be true when made and (unless expressly made as of the date hereof or as of another specific date) shall be true at and as of the time of the Closing with the same effect as though such representations and warranties were made at and as of such time.

(b) Performance by Buyer, Marubeni and Marubeni-Japan. Each of Buyer, Marubeni and Marubeni-Japan shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing.

(c) Compliance Certificate. Buyer and Marubeni shall have each delivered to Sellers a certificate executed by the President or a Vice President and the Secretary of each, certifying that the conditions specified in paragraphs (a) and (b) have been fulfilled.

(d) Opinion of Buyer's Counsel. Sellers shall have received from Rathheim, Hoffman, Kassel & Silverman, counsel to Buyer, Marubeni and Marubeni-Japan a favorable opinion dated the Closing Date, addressed to Sellers and satisfactory in form and substance to Sellers, to the following effect:

(i) Each of Buyer, Marubeni and Marubeni-Japan is a corporation organized, validly existing and in good standing under the laws of its incorporation;

(ii) Marubeni has full corporate power and authority to execute, deliver and perform this Agreement; and each of Buyer and Marubeni has

full corporate power and authority to take all actions to be taken by it in connection with the consummation of the transactions contemplated hereby, and Marubeni-Japan has full corporate power and authority to execute, deliver and perform the Marubeni-Japan Guarantee and to take all actions to be taken by it in connection with the formation of the Buyer;

(iii) All corporate proceedings required to be taken by or on the part of each of Buyer and Marubeni to authorize and carry out this Agreement, and all instruments and documents (including without limitation, instruments and documents of assumption of obligations, the Subleases and the Option Agreement) delivered pursuant hereto, have been taken, and all corporate proceedings required to be taken by or on the part of Marubeni-Japan to authorize and carry out the Marubeni-Japan Guarantee and the formation of Buyer have been taken;

(iv) This Agreement and each such instrument, document, guarantee or agreement have been duly executed and delivered on behalf of each of Buyer, Marubeni and Marubeni-Japan and each is a binding agreement in accordance with its terms, except to the extent that courts may

award money damages rather than specific performance of obligations other than the payment of money and enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights.

(v) To the best of such counsel's knowledge, there is no action, proceeding or investigation pending or overtly threatened against or involving Buyer, Marubeni or Marubeni-Japan or any of their subsidiary or affiliated companies, which questions the validity of this Agreement or any action to be taken by them in connection with this Agreement or the agreements contemplated hereby and which involves (i) any claim for rescission of the transactions contemplated by this Agreement (except a claim which, in such counsel's opinion, is without merit), or (ii) any claim against Sellers based on any action or omission of Buyer, Marubeni or Marubeni-Japan (except a claim which, in such counsel's opinion, is without merit). In expressing such opinion, counsel may rely upon the legal opinion of Braun, Moriya, Hoashi & Kubota as to matters of Japanese law and, as to matters of fact, upon certificates of any officer or officers provided (x)

the extent of such reliance is specified in such opinion and (y) such opinion of Japanese counsel shall also be addressed to Sellers.

(e) Consents. Sellers shall have obtained the consents of the Port, the Trustee and, if required, the Federal Maritime Commission, to the Subleases.

(f) Board of Directors' Approval. The Boards of Directors of Sellers shall each have approved this Agreement and the transactions contemplated hereby.

6.2. Conditions of Buyer's and Marubeni's Obligations. Buyer's and Marubeni's obligations to consummate the transactions contemplated hereby are subject to the fulfillment, to Buyer's and Marubeni's reasonable satisfaction, prior to or at the Closing, of each of the following conditions:

(a) Representations and Warranties True at the Closing. The representations and warranties made by Sellers in this Agreement or in any document furnished to Buyer or Marubeni, pursuant hereto or in connection with the transactions contemplated hereby shall be true when made and (unless expressly made as of the date hereof or as of another specific date) shall be true at and as of the time of the Closing with the same effect as though such representations and warranties were made at and as of such time.

(b) Performance by Sellers. Sellers shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing.

(c) Compliance Certificate. Cook shall have delivered to Buyer and Marubeni a certificate executed by its Chairman of the Board, its President or one of its Vice Presidents and its Secretary certifying that the conditions specified in paragraphs (a) and (b) have been fulfilled.

(d) Opinion of Sellers' Counsel. Buyer and Marubeni shall have received from Fried, Frank, Harris, Shriver & Jacobson, counsel for Sellers, a favorable opinion dated the Closing Date, addressed to Buyer and Marubeni and satisfactory in form and substance to Buyer and Marubeni, to the following effect:

(i) Each of Sellers is a corporation organized, validly existing and in good standing under the laws of its jurisdiction of incorporation;

(ii) Each of Sellers has full corporate power and authority to enter into this Agreement and to take all actions to be taken by it in connection with the consummation of the transac-

tions contemplated hereby;

(iii) All corporate proceedings required to be taken by or on the part of each to authorize and carry out (x) this Agreement, and (y) each instrument and document (including, without limitation, instruments and documents of transfer, the Subleases, the Option Agreement and the Cook Guarantee) delivered pursuant hereto have been taken;

(iv) This Agreement and each such instrument, document and agreement have been duly executed and delivered on behalf of Sellers, and each is a binding agreement in accordance with its terms, except to the extent that the courts may award money damages rather than specific performance of obligations other than the payment of money and enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights.

(v) To the best of such counsel's knowledge, there is no action, proceeding or investigation pending or overtly threatened against or involving any of Sellers or any of their subsidiary or affiliated companies or any of the Elevator Properties, which questions the validity of this Agreement or any action taken

or to be taken by Sellers in connection with this Agreement or the agreements contemplated hereby and which involves (i) any claim for rescission of the transactions contemplated by this Agreement (except a claim which, in such counsel's opinion, is without merit), or (ii) any claim against Marubeni or Buyer based on any action or omission of Sellers (except a claim under any applicable Bulk Sales Law or a claim which, in such counsel's opinion, is without merit).

In expressing such opinion, counsel may rely upon the legal opinion of other counsel and, as to matters of fact, upon certificates of any officer or officers provided (x) the extent of such reliance is specified in such Agreement and (y) such opinion shall state with respect to the opinions of other counsel that Buyer and Marubeni are justified in relying thereon.

(e) Consents and Option Agreement. Sellers shall have obtained the consents of the Port, the Trustee and, if required, the Federal Maritime Commission, to the Subleases, and the Port and the Trustee shall have executed the Option Agreement.

(f) Estoppel Certificates, etc. Sellers shall have obtained estoppel certificates from the Port with respect to the Elevator Leases to the effect that such leases are in good standing and in full force and effect, that such leases have not been amended, modified, supplemented or extended; the date through which all rent and other charges due under such leases have been paid; and that the Port has delivered to Sellers no written notice of any default or event which, with the passage of time or notice, or both, would constitute a default under such leases, which has not been cured or for which adequate provision has not been made; provided that such certificate need not cover and may note a default in compliance with any provision of the Elevator Leases concerning the physical condition, maintenance, replacement or repair of the Elevator Properties or any part thereof. In the event that, notwithstanding Sellers' use of best efforts to obtain the estoppel certificate required by this paragraph (g), Sellers shall fail to obtain such estoppel certificate, or the estoppel certificate obtained shall fail to cover a matter required to be covered thereby, Cook shall have substituted for such estoppel certificate or such matter which was not covered, its representation and warranty to the

effect of the estoppel certificate which was not obtained or covering the matter which was not covered in the manner required with respect to the estoppel certificate; provided, that such representation and warranty need not cover and may note a default in compliance with any provision of the Elevator Leases concerning the physical condition, maintenance, replacement or repair of the Elevator Properties or any part thereof.

(g) Board of Directors Approval. The Board of Directors of each of Marubeni and Marubeni-Japan shall have approved this Agreement and the transactions contemplated hereby.

(h) No Material Impairment. From and after the date hereof there shall not have occurred a Material Impairment with respect to the Project.

"Material Impairment" means such damage to, or destruction of, the Project, as (i) materially impairs the operation of the Project, due regard being had to storage capacity and thruput capacity requirements at the scheduled Closing Date, and (ii) its effect cannot be cured by the use of normal and reasonable commercial and engineering measures on or before a date 60 days after the Closing Date as determined in writing, by Homan & Lawrence Engineering Co., San Mateo, California,

or, in the case of the refusal or inability of such firms to act, by Marshall, Barr and Pacquer, Inc., Seattle, Washington

(i) Permits. Buyer shall have obtained all of the permits listed in Exhibit O.

(j) Amendatory Lease. The Port and the Trustee shall have entered into an amendatory lease containing provisions substantially as set forth in sections 2.6 and 2.7 of Exhibit I.

7. Withdrawal of Assets; etc.

7.1. Withdrawal of Sold Assets. If it shall appear that any of the conditions specified in Section 6.2 shall be unfulfilled at the Closing with respect to any Sold Assets, Cook will promptly so notify Buyer and Marubeni. Unless Marubeni shall agree within a reasonable time after receiving such notification to waive such closing condition with respect to such Sold Assets, such Sold Assets shall be withdrawn from the sale to Buyer under this Agreement.

7.2. Consequences of Withdrawal. After any withdrawal of property pursuant to Section 7.1, (a) the withdrawn property (the "Withdrawn Property") shall no longer be considered a "Sold Asset" for the purposes of this Agreement, (b) Sellers shall not be obliged to sell any Withdrawn Property, (c) Buyer shall not be obliged to purchase any Withdrawn Property or to assume any Assumed Obligations relating thereto, and (d) if any of the Spare Parts and

Supplies are withdrawn, the purchase price of the Sold Assets shall be appropriately adjusted. The conditions to Closing set forth in Section 6.2 shall not, insofar as they relate to any Withdrawn Property, constitute conditions to purchase and sale of the remaining Sold Assets hereunder, and Sellers shall have no liability hereunder by reason of their failure to cause any of the conditions to Closing to be fulfilled on or prior to the Closing Date insofar as such conditions relate to a Withdrawn Property.

7.3. Assigned Contracts. To the extent that any of the leases or contracts or rights of Sellers to be assigned hereunder is not assignable without the consent of another party, this Agreement shall not constitute an assignment or an attempted assignment thereof, if such assignment would constitute a breach thereof. If Sellers shall be unable to obtain a consent necessary for the assignment of its title to, interest in and rights under any contract or lease to be assigned hereunder, then Sellers and Buyer will cooperate in any reasonable arrangement designed to enable Sellers to perform their obligations hereunder, and to provide for the assumption by Buyer of the benefits, risks and burdens of any such agreements, including enforcement at the cost and for the account of Buyer of any and all rights of Sellers against the other party thereto arising out of the breach or cancellation thereof after the Closing by such other party.

8. Survival of Representations; Indemnifications

8.1. Nature and Survival of Representations. None of the parties to this Agreement, nor any finder, broker agent, officer, employee, servant or representative of any of them has made any representations or warranties except those set forth in this Agreement or in any certificate or other instrument or agreement delivered pursuant hereto or in connection with the transactions contemplated hereby. Except as otherwise specifically provided herein, all representations and warranties contained in this Agreement or any such certificate or other instrument or agreement shall survive the Closing hereunder.

8.2. Indemnification By Sellers. From and after the Closing, Sellers jointly and severally will indemnify and hold Buyer and Marubeni harmless from and against all claims, liabilities, costs, expenses, damages and losses arising out or from:

(a) any liability or obligations of Sellers (whether arising before or after the Closing) other than the Assumed Obligations;

(b) any inaccuracy in any representation or warranty made by Sellers in this Agreement or in any documents contemplated hereby or any breach of any covenant by Sellers contained in this Agreement or in any documents contemplated hereby (other than any such representation, warranty or covenant

insofar as it relates to a Withdrawn Property); and

(c) any claims or liabilities arising under any applicable Bulk Sales Law in connection with the transactions contemplated by this Agreement or with respect to any separate sale of grain contracts or grain inventories by Sellers to Buyer or Marubeni incident to the transactions contemplated hereby.

8.3. Indemnification By Buyer. From and after the

Closing:

(a) Buyer will indemnify and hold Sellers harmless from and against all claims, liabilities, costs, expenses, damages and losses arising out of or resulting from any default by Buyer, its successors or assigns with respect to any of the Assumed Obligations or any obligations of Buyer under the Subleases or the Option Agreement;

(b) Buyer and Marubeni, jointly and severally, will indemnify and hold Sellers harmless from and against all claims, liabilities, costs, expenses, damages and losses arising out of or resulting from any inaccuracy in any representation or warranty made by Buyer, Marubeni or Marubeni-Japan in this Agreement or in any documents contemplated hereby or any breach of any covenant by Buyer, Marubeni or Marubeni-Japan contained in this Agreement or in any documents contemplated hereby.

8.4. Defense of Third Party Claims. Upon receipt by Sellers or Buyer or Marubeni of written notice of any claim or the service of a summons or other initial legal process upon such party in connection with any action instituted against it in respect of which indemnification may be sought under this Section 8, such party (the "Indemnified Party") shall promptly give written notice of such claim, or the commencement of such action, or the threat thereof, to the party or parties obligated to indemnify against such claim or action (the "Indemnifying Party"). The Indemnifying Party shall be entitled at its own expense to participate in the defense of such claim or action, or if it shall elect, to assume such defense, in which event such defense shall be conducted by counsel chosen by the Indemnifying Party and reasonably satisfactory to the Indemnified Party and the Indemnified Party shall bear the fees and expenses of any separate counsel retained by it or them; but if the Indemnifying Party shall elect not to assume defense of such claim or action, the Indemnifying Party will reimburse the Indemnified Party for the reasonable fees and expenses of counsel retained by it. Neither party will settle any claim or litigation which will give rise to liability to the other under this Section 8 without the other's written consent, such consent not to be unreasonably withheld.

8.5. No Third Party Beneficiaries. The provisions of this Section 8 are for the sole benefit of the parties

hereto and of Buyer and shall not give rise to any rights by or on behalf of parties other than Sellers, Buyer or Marubeni.

9. Sellers' Employees

9.1. Hiring Sellers' Employees. Sellers agree that Buyer may, but is not obligated to, offer to hire on the Closing Date any of their present employees employed at the Project. Buyer may, prior to the Closing, discuss employment terms and conditions with such employees prior to the Closing.

9.2. Covenant Not To Employ. If, for any reason, the Closing does not occur, neither Buyer nor Marubeni will employ or offer employment to any of Sellers' employees for a period of nine months from April 26, 1978.

10. Expenses, Taxes and Apportionment of Certain Items.

Sellers on the one hand and Buyer and Marubeni on the other will each pay all costs and expenses of their respective performance hereunder, except that the fees and expenses of Price, Waterhouse & Co. with respect to their services under Section 2.1 shall be borne equally by Sellers on the one hand and Buyer and Marubeni on the other. All personal property taxes and assessments with respect to any of the Sold Assets or any rent (other than rent or other amounts payable under the Elevator Leases), utility charges or similar taxes, assessments, fees or charges, and all other charges, if any, on or against or payable in respect of the Equipment Leases, the Operating Contracts or the Project or the Parking Lot, and all insurance premiums with respect to the Insur-

ance Policies, whether prepaid or accrued, will be apportioned between the Buyer and Sellers as of midnight on the day immediately preceding the Closing with all the same allocable to the period prior to midnight of the day immediately preceding the Closing to be paid by Sellers and all of the same allocable to the period after midnight of the day immediately preceding the Closing to be paid by Buyer. Escrowed amounts and security deposits will be purchased at par by Buyer.

11. Dust Control Devices

11.1. Requirement to Install. Pursuant to Air Contaminant Discharge Permit no. 26-2807 (as amended) granted by the Oregon Department of Environmental Quality (and described in Exhibit M), equipment to control emissions must be installed on the ship loading booms at the Project. The parties have agreed that the equipment (the "Devices") described in the drawing submitted to Sellers by Homan & Lawrence Engineering Co. and described in a letter dated May 9, 1978 and two letters dated June 1, 1978 (a copy of such drawings has been given to Marubeni) should be installed.

11.2. Payment for Installation. The cost of the installation of the Devices shall be paid one-half by Buyer and/or Marubeni and one-half by Sellers, provided, however, that in no event shall the amount paid by Buyer and/or Marubeni (exclusive of financing charges) exceed \$350,000, and any excess shall be paid by Sellers. Buyer shall promptly pay

to Sellers, upon notice by Sellers, all amounts Buyer is obligated to pay under this Section 11.2. If, however, the cost of the installation of the Devices shall have been financed, then, unless Buyer or Marubeni shall be required to pay its share of such cost, interest and financing charges directly to the lender, Buyer or Marubeni shall pay Sellers five days prior to Sellers' required payments (as set forth in a notice from Sellers to Buyer and Marubeni), 50% of each principal payment plus 50% of each interest and other financing charge payment in respect of such cost of installation (or if the aggregate cost of installation shall exceed \$700,000 principal amount, in respect of 50% of the first \$700,000 principal amount of such cost only).

12. Transactions Upon Termination of the Sublease.

12.1. Sale by Buyer. Upon the expiration or earlier termination of the Sublease and Agreement, unless Buyer or Marubeni shall have duly exercised its Project Option under the Option Agreement, Buyer will sell and assign on the terms and conditions set forth in this Section 12 to Cook or a wholly-owned subsidiary of Cook, and Cook or a wholly-owned subsidiary of Cook will purchase:

(a) all of the spare parts and supplies which are then located in or at the Project;

(b) all of Buyer's title to, interest in and rights under the Equipment Leases which are then in full force and effect; and

(c) all of Buyer's transferable rights under the Operating Contracts which are then in full force and effect.

12.2. Option to Purchase. Simultaneously with any sale pursuant to Section 12.1, Cook or a wholly-owned subsidiary of Cook shall, at Seller's option, have the right to purchase, on the terms and conditions set forth in this Section 12:

(a) any or all of Buyer's machinery or equipment which is located at and used by Buyer in the operation of the Elevator Properties, but which is not included in the Leased Equipment (as defined in the Sublease and Agreement);

(b) all of Buyer's title to, interest in and rights under any or all leases of personal property which is located at and used by Buyer in the operation of the Elevator Properties, other than the Equipment Leases;

(c) all of Buyer's transferable rights under any or all agreements for the supply of fuel, water, electricity or other goods or services for the maintenance, servicing or physical operation of the Elevator Properties other than the Operating Contracts.

12.3. Cash Purchase Price. Cook or a wholly-owned subsidiary of Cook shall pay to Buyer in respect of

the assets purchased pursuant to Sections 12.1 and 12.2, the aggregate cost to Buyer of those of such assets purchased which are described in paragraph (a) of each of Section 12.1 and Section 12.2, as set forth in a certificate of the Chief Financial Officer of Buyer, which certificate shall specify such cost and the quantity of such assets as determined by a physical inventory as of the date of such purchase; provided, that Cook or such wholly-owned subsidiary of Cook may, at its option, offset against any or all of the amount payable by it under this Section 12.3, all or any part of amounts payable by Buyer to CRT or Cook or both of them under the Sublease and Agreement or any other agreement.

12.4. Assumption of Obligations. Upon any purchase or assignment specified in Section 12.1 or Section 12.2, Cook or a wholly-owned subsidiary of Cook shall assume all obligations of Buyer under leases and contracts assigned to it pursuant to paragraphs (b) and (c) of each of Sections 12.1 and 12.2.

12.5. Representations and Warranties. Upon any purchase or assignment specified in Section 12.1 or Section 12.2, Buyer shall represent and warrant to Cook that:

(a) Buyer will transfer title to the assets purchased, tangible and intangible, free and clear of all liens, any mortgages, security interests and other encumbrance;

(b) each agreement assigned pursuant to Section 12.1 or Section 12.2 shall be in full force and effect, and, to the actual knowledge of Buyer, without any defaults thereunder by Buyer; and

(c) Buyer will pay all amounts required to be paid on or before the date of such purchase or assignment under such agreements;

Buyer shall also make representations and warranties to the purchaser (with such exceptions as Buyer may specify) similar to Section 4.1(f) of this Agreement, and Buyer shall apportion with the purchaser all taxes, rents, assessments, fees and charges in respect of the assets sold and agreements assigned in a manner similar to that provided in Section 10 of this Agreement.

13. No Brokers.

All negotiations relative to this Agreement and the transactions contemplated hereby have been initiated and carried out by each party in such a manner as not to give rise to any valid claim against the other party hereto for any brokerage commission, finder's fee or other like payment. Each party hereby indemnifies the other against any such claim asserted against the indemnified party by any person on account of transactions or agreements or alleged contracts and agreements between the claimant and the indemnifying party.

14. Miscellaneous

14.1. Undertakings. Cook hereby undertakes to

cause CRT to perform all of its obligations under this Agreement or contemplated hereby, and Marubeni hereby undertakes to cause Buyer and Marubeni-Japan to perform all acts to be performed by either of them under this Agreement or contemplated hereby.

14.2. Bulk Sales Law. The parties hereto hereby waive compliance with the bulk sales law of any applicable jurisdiction.

14.3. Certain Documents. At the Closing, Sellers will deliver to Buyer, at Seller's expense, copies of all records for the period since December 31, 1975 relating to the Assumed Obligations in the possession of Sellers. From and after the Closing:

(a) if reasonably requested by Cook, Buyer will permit Cook to inspect and copy any of the documents delivered to Buyer by Cook pursuant to this Section 14.3, to the extent such documents are available;

(b) Subject to causes beyond its control, Buyer will preserve and maintain such documents for a period of eight years after the Closing Date and shall notify Cook before destroying or disposing of any of such documents; and

(c) Buyer will permit Sellers to maintain Sellers' books, records and files at the Project for a period of 90 days after the Closing.

14.4. Further Assurances. From time to time after the Closing, at the request of Buyer and without expense to Buyer (other than for taxes and recording fees), Sellers will execute and deliver such further instruments of conveyance and transfer and will take such additional actions as Buyer may reasonably request in order to effect, confirm or evidence the transfer to Buyer of the assets and properties sold under this Agreement.

14.5. Cooperation with Respect to Litigation. If on or after the Closing Date there shall be any litigation, proceeding or governmental inquiry, whether formal or informal, pending or threatened with respect to or affecting the subject of this Agreement, or any matters contemplated hereby or the business conducted by Sellers or to be conducted by Buyer at the Facility (or in which litigation, proceeding or inquiry, the business conducted by Sellers or to be conducted by Buyer at the Facility may be relevant) and involving any party to this Agreement, each of the other parties hereto shall provide such information in connection therewith as is readily available to such other party and is reasonably requested by the party involved in such litigation, proceeding or inquiry.

14.6. Collection of Receivables. After the Closing Date, Buyer will cooperate with Sellers in connection with the billing and collection by Sellers of Sellers' receivables arising out of the business conducted by Sellers at the

Project. If after the Closing Date, Buyer shall receive any payments in respect of such receivables, Buyer will promptly transfer and deliver the same to Cook.

14.7. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, but shall not be assignable prior to the Closing by Sellers on the one hand or Marubeni on the other without the prior written consent of the other. In no event shall any assignment relieve or discharge the assignor from any of its obligations hereunder.

14.8. Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of New York.

14.9. Waiver. In the event that Buyer or Marubeni or Sellers, as the case may be, shall waive the application or fulfillment of any condition to the Closing set forth in Section 6.1 or Section 6.2, as the case may be, the party waiving such application or fulfillment shall have no claim or right of action or other remedy under Section 8, or any other provision of this Agreement or at law or in equity with respect to the failure to fulfill such condition or any inaccuracy in any representation or warranty or breach of any covenant resulting in such failure to fulfill such condition.

14.10. Notices. Any notices or other communications required or permitted hereunder ^(shall be in writing and) shall be sufficiently

given if given by hand, sent by telex or ~~telex~~ or registered mail or certified mail, postage prepaid, addressed as follows:

To Buyer and Marubeni: Marubeni America Corporation
200 Park Avenue
New York, N.Y. 10017
Attention: General Manager,
Produce Department

With copy to: Marubeni America Corporation
200 S.W. Market St.
Suite 1408
Portland, Oregon 97201
Attention: General Manager

and

Alan J. Neuwirth, Esq.
Rathheim, Hoffman, Kassel &
Silverman
61 Broadway
New York, N.Y. 10006

To any Seller: Mr. E.W. Cook
Chairman and Chief Executive
Officer
Cook Industries, Inc.
855 Ridgelake
Memphis, Tennessee 38117

With copy to: Sam D. Chafetz, Esq.
Waring, Cox, Sklar, Allen,
Watson & Chafetz
2000 Sterick Building
Memphis, Tennessee 38103

and

Lewis A. Stern, Esq.
Fried, Frank, Harris,
Shriver & Jacobson
120 Broadway
New York, New York 10005

or to such other address as either party shall furnish to the other by notice in writing.

14.11. Complete Agreement. This Agreement and the Exhibits hereto constitute the entire agreement and understanding between the parties hereto with respect to the transactions contemplated hereby and supersede all prior and contemporaneous agreements and understandings between the parties hereto with respect to such transactions. All exhibits referred to in this Agreement shall be binding upon the parties with the same legal effect as if incorporated in the body of this Agreement. This Agreement may not be modified, waived or amended other than by an agreement in writing signed by an officer of each of the parties.

14.12. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

COOK INDUSTRIES, INC.

By: /s/ Jay E. Rainey
Senior Executive Vice President
COLUMBIA RIVER TERMINAL COMPANY

By: /s/ Jay E. Rainey
Vice President

MARUBENI AMERICA CORPORATION

By: /s/ Ryutakawasaki
President